

COMANCHE INDIAN TRIBE,	: Order Affirming Decision
Appellant	:
	:
v.	: Docket No. IBIA 95-165-A
	:
ANADARKO AREA DIRECTOR,	:
BUREAU OF INDIAN AFFAIRS,	:
Appellee	: August 19, 1996

Appellant Comanche Indian Tribe seeks review of a July 28, 1995, decision issued by the Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA declining to fund appellant's FY 1995 Special Tribal Court Grant application. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

In April 1995, appellant applied for a FY 1995 Special Tribal Court Grant. By letter dated July 28, 1995, the Area Director declined to fund the application. The decision letter states:

1. Budget provides that approximately one-half of the grant will be used to fund a Project Director/Court Administrator. This Position Description then shows that this employee will develop codes, court procedures, and participate in legal training. It further provides that the employee will serve as a magistrate for specific limited purposes.

It is an extremely questionable practice to permit an administrative employee to use judicial authority. This would also cast on the court clerk's office an appearance of conflict since a court administrator would be taking an adverse action against a party; court clerks are neutral; they process documents and retain the files; persons against whom a temporary court order was signed by the Court Administrator would not feel the case was being processed fairly.

2. The tribe has stated that its greatest need is for training for its court personnel; the judges are lay persons without formal legal education or experience. The actions taken by the judges greatly affect the rights and well-being of the parties and the families before the court. Such responsibility does call for continuing training and education on the parts of the judges and the other court personnel in their respective duties. The proposed budget does not reflect the emphasis on training and education emphasized in the narrative.

(July 28, 1995, Letter at 1).

Appellant argues that the Area Director erred in two ways in regard to is first reason for declining to fund its grant application. Appellant first contends that no law, rule, or regulation prohibits an administrative official from exercising judicial authority, and that in the absence of any such legal prohibition, it was an abuse of discretion for the Area Director to conclude that a conflict of interest existed in such an arrangement.

The Board disagrees. Few conflicts of interest are governed by law, rule, or regulation. At best, conflicts of interest may be described and discussed in guidelines such as, for example, the Canons of Professional Responsibility which apply to attorneys, and the Canons of Judicial Ethics which apply to judges. In general, however, it is left to the judgment of the individual and any overseeing body whether a particular action or situation constitutes a conflict of interest. Appellant's application did not include any definitive statement of tribal law concerning whether or not the exercise of judicial functions by an administrative employee was a conflict of interest under tribal law. The Board finds that, in the absence of such a statement, it was not unreasonable for the Area Director to determine that the exercise of judicial functions by an administrative employee created a situation in which the objectivity and impartiality of the court clerk's office might be compromised.

Appellant's second argument is that because the Comanche Indian Child Welfare Code does not provide for a Magistrate for the court and does not provide authority for a Magistrate to perform judicial tasks, "such authority cannot be unilaterally created by mere language contained in a job description." Appellant contends at page 6 of its opening brief:

The [Area] Director's decision of July 28 failed to note this glaring discrepancy between the organic enacting documents and the Court Administrator's "Position Description." This failure erroneously gave value to a minor part of a document that was, in effect, void ab initio and without legal effect. Instead of summarily deciding not to fund the FY - 95 Special Tribal Courts grant, the [Area] Director should have remanded it back to the Appellant Tribe for additional clarification. Such a remand would have had a less harsh effect on the proposal that was pending at that time than a blunt declination.

It is not the Area Director's responsibility to compare every grant application against the applicant's governing documents in order to determine whether there are any discrepancies, or, if such discrepancies are noted, to return the application for further work. Rather, it is the responsibility of the applicant, before submitting an application, to ensure that it is not applying for funding for an ultra vires project or function.

The Area Director's second reason for declining to fund appellant's application was that the budget did not give the same emphasis to training as did the narrative. Appellant argues that there is nothing to substantiate his conclusion, and that its FY 1995 application actually put greater funding emphasis on training that did its FY 1994 application, which was

funded. It also contends that because its funding request for FY 1995 was half of what it received in FY 1994, it is logical that proportionately more of the total must be devoted to administrative costs.

Appellant's FY 1995 narrative addresses the need for training. The only program goal listed is "[t]o improve and maintain the capabilities of the Comanche Tribal Court system to manage and administer justice in a fair and equitable manner" (Application at 8). The application further states that the objectives are to train judges and court personnel and to obtain law library materials and publications. In contrast, appellant states that its FY 1994 request included four different goals, one of which related to training.

Of appellant's total FY 1995 funding request of \$20,000, only \$3,700 (travel/training), \$2,667 (law library), and \$1,400 (legal consultant for training purposes), or 38.8%, is directly earmarked for training. A total of \$9,333, or 46.6%, is devoted to the salary of the Court Administrator. The role of the Court Administrator is discussed in one sentence on page 8 of the application: "The Special Tribal Courts Grant will be administered by the Tribal Court Administrator, as the Project Director, for the Comanche Tribe on a part-time basis." This role is also mentioned in the Court Administrator's Position Description as number 6 of 7 entries under "Duties and Responsibilities:" "Participates in continuing legal training for court personnel." The Court Administrator's remaining 6 duties are unrelated to training.

The Board does not find it unreasonable for the Area Director to conclude that a funding request setting out one specific goal does not give sufficient emphasis to that goal when less than 40% of the requested amount is earmarked for that goal.

Finally, appellant argues that the Area Director should not have denied its application because the Superintendent found no deficiencies in its application. The Superintendent's checklist indicates that the application was reviewed under 25 CFR Part 272. Section 272.19 states that the Superintendent initially reviews the application and recommends whether it should be funded, but section 272.21 places the decision as to whether to approve or disapprove an application with the Area Director. A Superintendent's recommendation is not binding on the Area Director. Cf. Fort McDermitt Paiute-Shoshone Tribe v. Acting Phoenix Area Director, 27 IBIA 84 (1994) (same conclusion reached on the basis of the Federal Register announcement of the availability of FY 1994 funding for the Training and Technical Assistance grant program).

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Anadarko Area Director's July 28, 1995, decision is affirmed.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge